IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12289 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIWANBHAI BHAILALBHAI PATANWADIA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12289 of 2002

MR VM DHOTRE for MR AK CHITNIS for Petitioner

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 13/05/2003

ORAL JUDGEMENT

#. By this petition under Article 226 of the Constitution of India, the petitioner has assailed the

detention order passed against him by the Commissioner of Police, Vadodara City, the respondent No.1 herein, on 24th September, 2002, on the ground that the detention order is illegal, unconstitutional and invalid.

#. The main question which falls for consideration and adjudication in this writ petition is whether the order of detention under the provisions of Section 3(2) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act") was made with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order since he was a "bootlegger" within the meaning of Section 2(b) of the Act?.

#. The main purpose and object of the Act is to provide for preventive detention of "bootleggers", "dangerous persons", drug offenders, immoral traffic offenders, property grabbers, etc. for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. In the present case, the detenu has been labelled as "bootlegger". The definition of "bootlegger" is exhaustively provided in clause (b) of Section 2 of the Act, which reads thus:

> "(b) "boot-legger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animals, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;

#. The detenu is alleged to be carrying on anti-social activities pertaining to selling of illicit liquor within the jurisdiction of Prohibition Police Station and Jawahar Nagar Police Station of Vadodra City. The Commissioner of Police, Vadodara City, by placing reliance on three criminal cases registered at Jawahar Nagar Police Station, Vadodara City, for offences punishable under the provisions of the Bombay Prohibition Act, made the order of detention. The fact that the petitioner has been released on bail in all the three

offences registered against him and has continued his anti-social activities of transporting, storing, and selling illicit liquor has been considered to be the main ground for passing the impugned detention order. It is further alleged in the grounds of detention that the petitioner is deeply involved in selling of illicit liquor and he is carrying on dangerous activities of threatening and beating innocent people in public. This conclusion is based on the subjective satisfaction from the statements of two witnesses, who are privileged witnesses under Section 9(2) of the Act. The respondent-authority, therefore, raised a ground that with a view to preventing the petitioner from acting in any way prejudicial to the maintenance of public order, the detention order was required to be passed. There is no dispute about the fact that in three criminal cases referred to in the grounds of detention, which are all under the Bombay Prohibition Act, the petitioner has been released on bail. Further, in said three criminal cases, 35 liters, 20 liters and 105 liters of country made liquor was recovered as Muddamal. The statements of the two privileged witnesses were recorded on 16.9.2002, they were verified by the authority on 18.9.2002 and the order of detention was passed on 24.9.2002. Therefore, there is no question of delay in passing the detention order in the instant case. The three criminal cases under the Bombay Prohibition Act which have been referred to in the grounds of detention were pertaining to the incidents of 15.4.2002, 20.4.2002 and 6.9.2002 respectively, and after recording the statements of two witnesses and verifying them, the detaining authority passed the detention order on 24.9.2002 holding that there has been sufficient material to show that the petitioner is deeply involved in illicit sale of liquor. As stated above, in addition to large quantities of illicit liquor recovered from the possession of petitioner, he was also found to be quarreling, threatening and beating the innocent people. He was also found to be running a distillery. He was stated to be having company of head strong persons and dangerous persons who also used to commit thefts and other offences. The detaining authority also found as a matter of fact that the detenu was in a habit of terrorizing and intimidating members of public and because of such head strong and dangerous personality of the petitioner, names and addresses of the witnesses who came forward to give statements against the petitioner were kept secret under Section 9(2) of the Act.

#. It is not unknown that illicit liquor is injurious and dangerous to health of citizens, particularly of the youth and elderly persons. The detaining authority,

after considering the material collected and the statements recorded of two witnesses and considering the history of cases, and on applying mind, found that it was a fit and appropriate case for passing the order of detention in exercise of powers under Section 3(2) of the Act on the ground that the petitioner is not only a "bootlegger" but also a head strong and dangerous person and responsible for spoiling health of the members of the society.

#. Mr.D.D.Tuteja, the Commissioner of Police, Vadodara City, has filed affidavit-in-reply. He has categorically stated in reply and on receipt of proposal along with material from the sponsoring authority for detention of the detenu, he had carefully scrutinised, examined and considered all such material and also personally verified the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses and he found those facts to be genuine and reliable and therefore, on the basis of those objective material and sufficient evidence, he formulated the grounds of detention and all those grounds were found to be true. He has fully supported the order of detention in his detailed and exhaustive affidavit.

#. The arguments of Mr.Dhotre, on behalf of the petitioner and of Mr.Samir J.Dave, learned Assistant Government Pleader, on behalf of the respondents have been heard.

#. The entire factual profile emerging from the record of the present case has been considered and upon consideration of the factual and legal aspects, as also the submissions advanced no behalf of both the sides, this Court is of the clear opinion that this is a fit and proper case for confirmation of the detention order passed by respondent No.1 against the present petitioner-detenu. This Court is in complete agreement that justifying reasons for passing the impugned order of detention by respondent No.1 under Section 3(2) of the Act were available. From the facts of the case, it cannot be said even for a moment that there was no sufficient material on record for passing the detention order. The material on record has objectively been examined and thereafter, subjective satisfaction is reached in so far as the impugned order of detention is concerned.

#. In support of this petition challenging the impugned order, the first contention raised on behalf of the petitioner is that mere involvement in criminal cases,

ipso facto, cannot lead to presumption of prejudicial impact on public and breach of public order. In that regard, it is submitted that at the best, it would be a case of law and order and not breach of public order. This submission prima-facie may appear to be alluring and attractive but it is not acceptable in the factual context and text emerging from the record of the present case. The following aspects are no longer in controversy as they have remained unquestioned:

(a) The first complaint was lodged on 15.4.2002, second on 20.4.2002 and third on 6.9.2002.

(b) Statements of two independent witnesses were recorded on 16.9.2002 and they were verified on 18.9.2002 and thereafter, on 24.9.2002, the order of detention was passed.

So, obviously, from the above, it can be safely said that there is no delay in passing the impugned order after the material was collected, examined and verified. From the chain of events as above, the submission, therefore, that dealing with illicit liquor or commission of offences under the Prohibition Act at the best would amount to breach of law and order and not public order is not tenable. It may be noted that there cannot be a straight-jacket formula. There cannot be any universal yardstick. The authority concerned is obliged to take into consideration all the aspects, facts and incidental circumstances so as to reach to a subjective satisfaction for the purpose of passing the order of detention against the detenu with a view o prevent him from carrying on further prejudicial activities and breaking public order. It is, therefore, very clear that this is not a punitive order but a preventive order. Whether such activities in a given case would affect the law and order only and not the public order or vice versa can be examined and adjudicated in the light of facts and circumstances of such case. However, so far as the present case is concerned, it is succinctly noticed by the detaining authority that the detenu is not only illegally dealing with transport, storage and sale of country made liquor since long and that too, in a large quantity, but he is also a head strong and dangerous person who is in a habit of threatening and beating innocent persons who come in his way. As stated above, by consuming such illicit country made liquor, health of persons, particularly the young ones, adolescents, and aged ones, is seriously jeopardized. In all the three criminal cases, he has been released on bail. Therefore, in all probability, if he is not detained, he was likely to indulge in the same

type of unlawful activities and deal with sale of illicit liquor. This is not enough. Be it noted that even for the purpose of selling and disposing of illicit liquor in huge quantity, with or without the help of his autorickshaw, he has to pressurize and terrorize citizens. It is very clear from the record that the detenu and his associates used to move in society with dangerous weapons and force others to buy their illicit liquor by giving them intimidation and threats. It is therefore in this context that the detaining authority has described him and characterized him as "dangerous person". When the petitieonr was enlarged on bail during the pendency of trial in three criminal cases, subjective satisfaction reached by the detaining authority, on assessment of objective material available and emerging from the record of the present case, of passing the detention order in purported exercise of powers under Section 3(2) of the Act cannot be said to be in any way unjust, unreasonable, illegal, void or in any manner vulnerable. This Court, therefore, finds that the impugned order of preventive detention made under Section 3(2) of the Act by the Commissioner of Police, Vadodara City, cannot be assailed.

##. Attention of this Court was also invited by Mr.Samir J.Dave, learned Assistant Government Pleader, to a decision of the Hon'ble Apex Court in the case of Kanuji S.Zala v. State of Gujarat and others, reported in (1999)4 SCC 514. In the said case, in the grounds of detention, the detenu was stated to be a "bootlegger" involved in illegal activity of selling liquor and indulging in violence for carrying on said activity. As in that case, the detaining authority, in the instant case, has specifically stated in the grounds of detention that selling of liquor and its consumption by people of the locality was harmful to their health and that the statements of witnesses clearly show that as a result of violence resorted to by the detenu, the members of public had to run away from the public place and had to go inside their houses and close their doors. This clearly amounts to disturbance of public life in the locality for some time and the said activity can be termed as "prejudicial to the maintenance of public order". Therefore also, relying on the case cited above, the subjective satisfaction arrived at by the detaining authority based on credible material can be said to be reasonable and genuine. In that case also, the detention was under Section 3(2) of the Act. What is required to be considered in such cases, is whether there was credible material before the detaining authority on the basis of which reasonable inference could have been drawn

as regards the adverse impact on the maintenance of "public order" as defined in the Act? The answer to this question, in view of the material produced before the detaining authority and the record of the Special Civil Application, definitely comes in the affirmative. It is also equally settled that whether material was sufficient or not is not for the Courts to decide by applying test as it is a matter of subjective satisfaction of the detaining authority. This decision supports the case of the respondent-State and demolishes the contention that mere involvement in liquor case would not, in any way, result into activities prejudicial to maintenance of public order and at the best, it would amount to breach of law and order. Therefore, the main thrust of argument on behalf of the petitioner falls flat on the ground.

##. In so far as the last contention advanced on behalf of the petitioner that less drastic measures were not considered and employed before passing the impugned detention order, it is suffice to say that the same appears to be factually wrong and legally unsustainable. It is very clear from the order of the detaining authority and the grounds of detention that alternative measures or less drastic measures were considered by the detaining authority but it was not thought fit to apply the same considering the anti social activities of the petitioner. Even otherwise, it is not incumbent upon the authority to resort to less drastic measures before passing the order of detention. This proposition of law is very well explained and expounded by this Court in Full Bench decision in the case of Koli Bharatbhai Ukabhai Vegad v. District Magistrate, reported in 2001(2) GLH 335, in which this Court was also a party. It will be fruitful to reproduce the observations and directions made by this Court in the said decision:

"39. By catena of judicial pronouncements, following aspects have emerged, unquestionably, which are required to be kept live on the mental radar before reaching to the subjective satisfaction for passing the order for detention:

(i) Only relevant and vital material is required to be taken into consideration for subjective satisfaction of the Detaining Authority.

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision making function is entrusted to the subjective satisfaction of the statutory functionary, there

is an implicit incumbency to apply his mind to the pertinent and proximate matters only eschewing the irrelevant and remote aspects.

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the Detaining Authority which cannot be questioned by the Court. Nonetheless, if the Detaining Authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated.

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness o the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision making process for reaching the subjective satisfaction on objective facts, is in any way influenced, coloured or affected by any caprice, malice or irrelevant considerations or non application of mind.

(v) Subjective satisfaction cannot be re-examined or reviewed by the Court on the ground that ordinarily general criminal law can be invoked instead of special enactment.

(vi) At the time of making a detention order, the authority should arrive at proper satisfaction and such satisfaction should be reflected, clearly, and in categorical terms in the order of detention.

(vii) The satisfaction cannot be inferred by very making of the order which says that "it was necessary to prevent the detenu from acting in a manner prejudicial" falling within the mischief of Section 3(1) of the Act.

(viii) The Detaining Authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention by an expression of satisfaction.

(ix) Justification for such an order should exist in the very ground furnished to the detenu to reinforce the detention order. Ordinarily, it

cannot be explained subsequently by substituting further reasons. It is, therefore, clear that the decision of the authority must be natural culmination of the application of mind to the relevant and material facts.

(x) The subjective satisfaction is based no mental process and it must be followed by the authority in taking action for passing the detention order:

(i) First, in such a process, in the first stage is to examine the material adduced against the prospective detenu to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner.

(ii) Second, if the aforesaid material appears, satisfactorily, to the authority concerned, then the Detaining Authority has to further consider whether it is likely that the said person would act in prejudicial manner in the near future, if he is not prevented from doing so by passing an order of detention.

For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. In absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the Detaining Authority."

##. Therefore, all the grounds which are against the validity and legality of the impugned order of detention are without any substance. In short, the petition is meritless, and, it is required to be rejected. Accordingly, the petition is dismissed. Rule is discharged. No order as to costs.

(J.N.Bhatt, Acting C.J.)

(sunil)